

Spouses

MEMORANDUM FOR: Deputy Director for Special Programs
Office of Personnel

Chief, Administrative Law Division
Office of General Counsel

STAT FROM:

Legislation Division
Office of Legislative Liaison

SUBJECT: S. 2821; "Civil Service Former Spouses
Benefits Act of 1984"

1. Attached for your review and comment is S. 2821, the "Civil Service Former Spouses Benefits Act of 1984." Senator Mathias introduced this bill on 28 June 1984 and it is currently pending before the Senate Committee on Governmental Affairs.

2. This bill provides four benefits for spouses of civil service employees.

First, it permits a Federal employee or annuitant to voluntarily elect to provide survivor benefits to any former spouse.

Second, it gives State courts the authority to include survivor benefits as part of a divorce decree or property settlement.

Third, it requires an employee at the time of retirement to obtain the written, notarized consent of his or her spouse before he or she can elect not to provide a survivor annuity.

Fourth, it permits a former spouse to enroll in the Federal employee health benefit plan as long as he or she pays the full subscription rate.

3. Hearings on this bill have been scheduled for 1 August 1984. Please provide this office with any comments you may have on this bill. Our office will monitor and report on the progress of this bill as appropriate.

STAT

Attachment

STAT cc:

OLL:LEG:ROD:sm (23 July 1984)

Distribution

Original - Addressee

1 - C/ALD/OGC

1 -

1 - OLL Chrono

1 - LEG Subject (former spouses)

1 - ROD Signer

1 - D/OLL

1 - DD/OLL

STAT

98TH CONGRESS
2D SESSION

S. 2821

To amend title 5, United States Code, to improve protections for former spouses of Government officers and employees under the Civil Service retirement system and the Federal employees health benefits program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 28 (legislative day, JUNE 25), 1984

Mr. MATHIAS (for himself and Mr. STEVENS) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To amend title 5, United States Code, to improve protections for former spouses of Government officers and employees under the Civil Service retirement system and the Federal employees health benefits program, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Civil Service Former
4 Spouses Benefits Act of 1984".

5 SURVIVOR ANNUITIES FOR FORMER SPOUSES: ELECTION

6 SEC. 2. Section 8339 of title 5, United States Code, is
7 amended by adding at the end thereof the following new sub-
8 section:

1 “(o)(1) For the purposes of this subsection, the term
2 ‘former spouse’, when used with respect to an employee,
3 Member, or former employee or Member, means any individ-
4 ual who—

5 “(A) was married to the employee, Member, or
6 former employee or Member for at least one year while
7 the employee, Member, or former employee or Member
8 was subject to this subchapter; or

9 “(B) was married to the employee, Member, or
10 former employee or Member and is the parent of issue
11 of the employee, Member, or former employee or
12 Member.

13 “(2)(A) An employee or Member retiring under this sub-
14 chapter or a former employee or Member entitled to an annu-
15 ity under this subchapter (including an annuity deferred pur-
16 suant to section 8338 of this title) may—

17 “(i) elect that any portion of the annuity of the
18 employee, Member, or former employee or Member, as
19 computed under subsections (a) through (i) and (n) of
20 this section, be reduced; and

21 “(ii) designate any former spouse of the employee,
22 Member, or former employee or Member to receive a
23 survivor annuity under section 8341(b) of this title
24 computed based on the amount of the portion of the

1 annuity that is subject to reduction by reason of the
2 election made under clause (i) of this subparagraph.

3 “(B) Subject to subparagraph (C) of this paragraph, an
4 election and designation under subparagraph (A) of this para-
5 graph may be made with respect to more than one former
6 spouse of an employee, Member, or former employee or
7 Member.

8 “(C) The sum of the portions of the annuity of the em-
9 ployee, Member, former employee or Member to which the
10 elections under subparagraph (A) of this paragraph and under
11 subsection (j) of this section apply may not exceed 100 per-
12 cent of the annuity.

13 “(D) An employee, Member, or former employee or
14 Member who has made an election and designation under
15 subparagraph (A) of this subsection may modify the election
16 or designation at any time.

17 “(3) Subject to the limitation set out in section
18 8341(b)(4) of this title, a court of any State or the District of
19 Columbia may, in a decree of divorce or annulment, or a
20 court order or court-approval of a property settlement agree-
21 ment incident to a decree of divorce or annulment, require an
22 employee, Member, or former employee or Member to make
23 an election and designation pursuant to paragraph (2) of this
24 subsection. Any such decree, order, or agreement providing
25 that a former spouse of an employee, Member, or former em-

1 ployee or Member shall be entitled to a survivor annuity
2 under this subchapter based on the service of the employee,
3 Member, or former employee or Member shall be considered
4 to require an election and designation pursuant to such para-
5 graph. Such an election and designation shall be deemed to
6 have been made upon receipt of a copy of such decree, order,
7 or agreement (and such further documentation as the Office
8 of Personnel Management may require) by the Office.

9 “(4) An election under paragraph (2) of this subsection
10 shall be made in writing in such form and manner as the
11 Office of Personnel Management may direct and shall be
12 transmitted to the Office.

13 “(5)(A) An election under paragraph (2) of this subsec-
14 tion shall not be considered valid in the case of an employee,
15 Member, or former employee or Member who, on the date the
16 election is made—

17 “(i) is married and has been married to his spouse
18 for at least one year; and

19 “(ii) is not required by a court to make the elec-
20 tion pursuant to paragraph (3) of this subsection,
21 unless the election includes, in such form and manner as the
22 Office directs, a written consent of the spouse satisfying the
23 requirements of subparagraph (B) of this paragraph.

24 “(B) A written consent of the spouse of an employee,
25 Member, or former employee or Member making an election

1 under paragraph (2) of this subsection satisfies the require-
2 ments of this subparagraph if the consent—

3 “(i) includes statements that the spouse consents to
4 the election and understands that, by reason of the
5 election, the spouse will not be entitled to receive a
6 survivor annuity under section 8341(b) of this title
7 based on the service of the employee, Member, or
8 former employee or Member or will receive only a re-
9 duced survivor annuity under such section based on
10 such service, as the case may be; and

11 “(ii) is signed and acknowledged by the spouse
12 before a notary public by the spouse.

13 “(6) The annuity computed under subsections (a)
14 through (i) and (n) of this section for an employee, Member,
15 or former employee or Member making an election under
16 paragraph (2) of this section shall be reduced by an amount
17 computed in the same manner as provided in the first sen-
18 tence of subsection (j)(1) of this section.”.

19 SURVIVOR ANNUITIES FOR FORMER SPOUSES:

20 ENTITLEMENT

21 SEC. 3. (a) Paragraph (1) of section 8341(b) of such title
22 is amended—

23 (1) by inserting “(A)” after “(1)”; and

24 (2) by adding at the end thereof the following new
25 subparagraph (B):

1 “(B) If a retired employee or Member dies survived by a
2 former spouse designated by the retired employee or Member
3 in an election made under section 8339(o)(2) of this title to
4 receive a survivor annuity under this subsection, the surviv-
5 ing former spouse is entitled to an annuity equal to 55 per-
6 cent of (i) the amount of the annuity of the retired employee
7 or Member computed under subsections (a) through (i) and (n)
8 of section 8339 of this title, or (ii) such portion of the amount
9 of such annuity as is specified in the election.”.

10 (b) Section 8341(b)(3) of such title is amended to read as
11 follows:

12 “(3) A surviving spouse of a deceased retired employee
13 or Member who became the spouse of such retired employee
14 or Member after the employee’s or Member’s retirement is
15 entitled to a survivor annuity under this subsection only upon
16 electing the survivor annuity instead of any other survivor
17 benefit to which the spouse may be entitled under this sub-
18 chapter or another retirement system for Government em-
19 ployees. The survivor annuity of a spouse, widow, widower,
20 or former spouse under this subsection commences on the day
21 after the annuitant dies. The survivor annuity and the right
22 to the survivor annuity terminate on the last day of the last
23 month before the spouse, widow, widower, or former spouse
24 dies.”.

1 (c) Subsection (b) of section 8341 of such title is further
2 amended by adding at the end thereof the following new
3 paragraph:

4 “(4) The total amount of the survivor annuities payable
5 under this subsection with respect to a deceased employee,
6 Member, or former employee or Member may not exceed an
7 amount equal to 55 percent of the annuity computed under
8 subsections (a) through (i) and (n) of section 8339 of this title
9 as may apply with respect to such employee, Member, or
10 former employee or Member. The order of precedence of an
11 entitlement of a spouse, widow, widower, or former spouse to
12 a survivor annuity under this subsection shall be based on the
13 order in which the Office of Personnel Management receives
14 notice of a valid election, designation, or other qualifying
15 action made by an employee, Member, or former employee or
16 Member, under subsection (j) or (o) of such section.”.

17 OTHER AMENDMENTS RELATING TO SURVIVOR ANNUITY
18 ELECTIONS

19 SEC. 4. (a)(1) The first sentence of subsection (j)(1) of
20 section 8339 of title 5, United States Code, is amended by
21 striking out “(o)” and inserting in lieu thereof “(n)”.

22 (2) Subsection (j)(2) of such section is amended to read
23 as follows:

24 “(2)(A) Any written notification or designation made
25 under the first sentence of paragraph (1) by an employee or
26 Member who, on the date of retirement, has been married to

1 his spouse for at least one year shall not be considered valid
2 unless the notification or designation includes, in such form
3 and manner as the Office directs, a written consent of the
4 spouse satisfying the requirements of subparagraph (B) of this
5 paragraph.

6 “(B) A written consent of the spouse of an employee or
7 Member making a notification or designation referred to in
8 subparagraph (A) of this paragraph satisfies the requirements
9 of this subparagraph if the consent—

10 “(i) includes statements that the spouse concurs in
11 the employee’s or Member’s desire expressed in the no-
12 tification or concurs in the employee’s or Member’s
13 designation, as the case may be, and that the spouse
14 understands that, by reason of the notification or desig-
15 nation, the spouse will not be entitled to receive a sur-
16 vivor annuity under section 8341(b) of this title based
17 on the service of the employee or Member or will be
18 entitled to receive only a reduced survivor annuity
19 under such section based on such service, as the case
20 may be; and

21 “(ii) is signed and acknowledged by the spouse
22 before a notary public.”.

23 (b) Subsection (k) of such section is amended by adding
24 at the end thereof the following new paragraph (3):

1 “(3) Any reduction in annuity and any entitlement to a
2 survivor annuity resulting from an election made under para-
3 graph (1) shall be void or limited prospectively to the extent
4 necessary to give effect to any valid election made under sub-
5 section (o)(2) of this section.”.

6 SURVIVOR ANNUITY FOR FORMER SPOUSES OF CERTAIN
7 ANNUITANTS WHO DIED BEFORE DATE OF ENACTMENT

8 SEC. 5. (a) For the purposes of this section—

9 (1) the term “employee” shall have the same
10 meaning as provided in section 8331(1) of title 5,
11 United States Code;

12 (2) the term “Member” shall have the same
13 meaning as provided in section 8331(2) of such title;

14 (3) the term “service” shall have the same mean-
15 ing as provided in section 8331(12) of such title;

16 (4) the term “widow” shall have the same mean-
17 ing as provided in section 8341(a)(1) of such title; and

18 (5) the term “widower” shall have the same
19 meaning as provided in section 8341(a)(2) of such title.

20 (b)(1) Notwithstanding any other provision of law,
21 except as provided in paragraph (2), if—

22 (A) a retired employee or Member was married on
23 the date of retirement under the provisions of subchap-
24 ter III of chapter 83 of title 5, United States Code (or
25 any similar prior provisions of law),

1 (B) the retired employee or Member was later di-
2 vorced from the individual to whom the retired employ-
3 ee or Member was married on such date,

4 (C) the retired employee or Member died without
5 remarrying before the date of enactment of this Act,
6 and

7 (D) the former spouse to whom the retired em-
8 ployee or Member was married on the date of retire-
9 ment is living on the date of enactment of this Act,
10 such surviving former spouse is entitled, upon application to
11 the Office of Personnel Management, to a survivor annuity
12 under section 8341(b)(1) of such title. The entitlement shall
13 take effect on the first day of the first month beginning not
14 less than 30 days after the date the Office receives such ap-
15 plication in such form and manner and with such documenta-
16 tion as the Office may require. The amount of the survivor
17 annuity shall be equal to the amount the surviving former
18 spouse would have been entitled to receive under such sec-
19 tion 8341(b)(1) if the former spouse had remained married to
20 the retired employee or Member, taking into account any des-
21 ignation validly made by the retired employee or Member
22 with respect to such former spouse under the first sentence of
23 section 8339(j)(1) of such title (or any similar prior provision
24 of law).

1 (2) Paragraph (1) shall not apply in the case of a retired
2 employee or Member who—

3 (A) notified the Office of Personnel Management
4 in writing at the time of retirement under such sub-
5 chapter that the employee or Member did not desire
6 any spouse surviving him to receive a survivor annuity,
7 as provided in the first sentence of section 8339(j)(1) of
8 such title (or any similar prior provision of law); or

9 (B) the retired employee or Member is survived by
10 a widow or widower who—

11 (i) married the retired employee or Member
12 after the employee's or Member's retirement
13 under subchapter III of chapter 83 of such title;
14 and

15 (ii) is entitled to an annuity under such sec-
16 tion 8341(b) based on the service of the retired
17 employee or Member.

18 **ENFORCEMENT OF COURT DIVISION OF ANNUITY**

19 **ENTITLEMENT**

20 **SEC. 6.** Section 8345(j)(1) of title 5, United States
21 Code, is amended to read as follows:

22 “(j)(1) If an employee, Member, or annuitant is obli-
23 gated by the terms of any decree of divorce, annulment, or
24 legal separation or the terms of any court order or court-
25 approved property settlement agreement incident to any
26 court decree of divorce, annulment, or legal separation to pay

1 periodically to any other person any portion of the amounts
2 the employee, Member, or annuitant is entitled to receive
3 under this subchapter based on the employee's, Member's, or
4 annuitant's service, the Office of Personnel Management
5 shall deduct and withhold the amount equal to such portion
6 from the amounts payable to the employee, Member, or annu-
7 itant under this subchapter for the applicable periods and pay
8 each amount deducted and withheld to such other person at
9 the place, if any, provided in such decree, order, or agree-
10 ment. Any payment made to a person under this paragraph
11 bars recovery by any other person.'".

12 FEDERAL EMPLOYEE HEALTH BENEFITS FOR FORMER
13 SPOUSES

14 SEC. 7. (a)(1) Section 8901 of title 5, United States
15 Code, is amended—

16 (A) by striking out "and" at the end of paragraph
17 (8);

18 (B) by striking out the period at the end of para-
19 graph (9) and inserting in lieu thereof a semicolon and
20 "and"; and

21 (C) by adding at the end thereof the following
22 new paragraph:

23 "(10) 'former spouse' shall have the same mean-
24 ing as provided in section 8339(o)(1) of this title.'".

25 (2) Section 8902 of such title is amended—

1 (A) in subsection (g), by inserting "or former
2 spouse of an employee or annuitant" after "employee
3 or annuitant" each place if occurs;

4 (B) in subsection (j), by striking out "or family
5 member" and inserting in lieu thereof "family member,
6 or former spouse of an employee or annuitant"; and

7 (C) in the first sentence of subsection (k), by strik-
8 ing out "or family member" and inserting in lieu
9 thereof "family member, or former spouse of an em-
10 ployee or annuitant".

11 (3) Section 8903 of such title is amended—

12 (A) in paragraph (1)—

13 (i) by inserting "or former spouses of em-
14 ployees or annuitants" after "families,"; and

15 (ii) by inserting "or former spouse of an em-
16 ployee or annuitant" before the period; and

17 (B) in paragraph (3), by inserting "(including
18 former spouses of employees or annuitants)" after
19 "individuals".

20 (4) Section 8905 of such title is amended by adding at
21 the end thereof the following new subsection:

22 "(f) A former spouse of an employee or annuitant who
23 was enrolled in a health benefits plan under this chapter as a
24 member of family of the employee or annuitant immediately

1 before the marriage to the employee or annuitant was dis-
2 solved may—

3 “(1) enroll in an approved health benefits plan de-
4 scribed by section 8903 of this title as an individual;
5 and

6 “(2) transfer enrollment from a health benefits
7 plan described by such section to another plan de-
8 scribed by such section at the same times and under
9 the same conditions as are prescribed by the Office for
10 employees and annuitants under subsection (e) of this
11 section.”.

12 (5) Section 8906 of such title is amended by adding at
13 the end thereof the following new subsection:

14 “(i) Under such regulations as the Office shall prescribe,
15 each former spouse (of an employee or annuitant) enrolled in
16 a health benefits plan under this chapter shall contribute the
17 full subscription price for the enrollment.”.

18 (6) Section 8907(a) of such title is amended by inserting
19 “and former spouse of an employee or annuitant” after “em-
20 ployee” each place it occurs.

21 (7) Section 8909 of such title is amended—

22 (A) in the second sentence of subsection (a), by in-
23 serting “former spouses of employees or annuitants,”
24 after “annuitants,”; and

1 (B) in the second sentence of subsection (d), by
2 inserting "or former spouse of an employee or annui-
3 tant".

4 (b) Not later than 90 days after the date of the enact-
5 ment of this Act, the Office of Personnel Management
6 shall—

7 (1) take such action as is necessary with respect
8 to contracts entered into and health benefits plans ap-
9 proved under the provisions of chapter 89 of such title
10 to carry out the amendments made by subsection (a);

11 (2) publicize the amendments made by subsection
12 (a) in the manner most likely to notify the former
13 spouses of officers and employees of the Government
14 regarding the rights and benefits resulting from such
15 amendments; and

16 (3) carry out a program of open enrollment for
17 former spouses entitled to enroll in a health benefits
18 plan under the provisions of such chapter.

19 TECHNICAL AMENDMENTS

20 SEC. 8. (a) Section 8339 of title 5, United States Code,
21 is amended—

22 (1) in subsection (l), by striking out "(o)" and in-
23 serting in lieu thereof "(n)"; and

24 (2) in subsection (m), by striking out "(o)" and in-
25 serting in lieu thereof "(n)".

26 (b) Section 8341 of such title is amended—

1 (1) in subsection (b)(1), by striking out “(o)” and
2 inserting in lieu thereof “(n)”; and

3 (2) in the first sentence of subsection (d), by strik-
4 ing out “(o)” and inserting in lieu thereof “(n)”.

5 **EFFECTIVE DATES**

6 **SEC. 9. (a)** Except as provided in subsection (b), the
7 amendments made by this Act shall take effect with respect
8 to any divorce or annulment taking effect before, on, or after
9 the date of enactment of this Act.

10 (b) Section 8339(o)(3) of title 5, United States Code (as
11 added by section 2), shall apply to any divorce or annulment
12 taking effect after the date of enactment of this Act.

○